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HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 220 OF 2007.
IN
CRIMINAL APPEAL NO. 662 OF 2002.

Ravi Ayyar. ..Applicant.

Versus.

The State of Maharashtra. ..Respondent.

Mr. Daulat G. Khamkar for the applicant.

Mrs. M. M. Deshmukh, A.P.P. for the State.

CORAM: S. B. MHASE &
SMT. NISHITA MHATRE, JJ.

DATE: MARCH 8, 2007.

P.C.

1. This criminal application is filed by the accused invoking the jurisdiction of this Court under section 7A of the Juvenile Justice (Care & Protection of Children) Act, 2000, (as amended in 2006 by the Amednemnt Act of 2006, Act No. 33 of 2006) (hereinafter in short, referred to as "the said Act".) thereby seeking an inquiry into the age of the accused so as to find out whether the accused is juvenile offender as defined in the said Act so as to avail the benefits conferred upon a child by the said Act. It is well settled position of law that - the age of

the acused to show whether he is a juvenile offender or not, is required to be considered at the time of occurrence of the offence. The same view has been taken by the Constitutional Bench of the Apex Court in the matter of **Pratapsing v/s. State of Jharkhand & Another (2005 Cri.L.J. 3091)**.

2. The offence in the present matter has taken place on 28th June 2000, and as per the appellant he was of the 17 years and 1 month of age on the date of the commission of the offence. As per the definition of the "juvenile" or "child" given in the said Act, Section 2(k) means "a person who has not completed eighteenth years of age", and therefore the appellant is a juvenile and he is equally a "juvenile in conflict with law" as defined in section 2(l) of the said Act, and therefore, he is entitled to claim the benefit of section 16 of the said Act. In fact, the age aspect was brought to the notice of the Sessions Judge in the Trial Court. Sessions Court has not looked into this aspect and has concluded that the accused - appellant is not a juvenile in conflict with law. It is simply observed by the Sessions Judge, Pandharpur in paragraph 30 of the judgment that "a mild attempt was however made by the learned Advocate for the accused to say

that accused Ravi Aiyyar was of 151/2 to 16 years at the time of commissionof the alleged offence. He is to be tried by the competent Court. It may be pointed out that age of the accused as noted in the charge sheet is 19 years. I too had found him around 18 years at the time of recording his statement under section 313 of Cr.P.C.. It appears that he was above 16 years at the time of the commission of alleged offence. There is nothing on record from which it can be inferred that accused was below 16 years at the relevant time. Much importance therefore cannot be attached to this submission of the learned Advocate for the accused."

. These observations show that Sessions Judge has not considered the provisions of the said Act. It appears that the Sessions Judge is making reference to the old Act, and desired that the age of the accused must be below 16 years of age so as to treat him as "child". However, by the time when the trial has taken place, the new Act [i.e., the Juvenile Justice (Care & Protection of Children) Amendment Act, 2006] has come into force. Therefore, the Court should have considered the provisions of the new Act, i.e., the amended provisions of the Act. More specifically, when the Court has found that at the time of

recording his statement under section 313 of the Cr.P.C. the accused was below 18 years of age then definitely his age at the time of commission of offence would have been less than 18 years and he would have been a "child" as defined in the amended provisions of the said Act. This material could have put the Sessions Judge to the caution so as to make an inquiry into the age of the accused and to find out whether he is really a "juvenile offender" or not. But for the reasons best known to the Sessions Judge, the Sessions Judge has not discharged this obligation by carrying out an appropriate inquiry and proceeded to convict the accused. However, that does not preclude the accused - appellant from claiming the benefit of the said Act. Therefore, this application is moved under section 7-A of the said Act wherein the inquiry has been contemplated by this Court.

3. In this Court, the accused - appellant has produced his School Leaving Certificate which shows his birth-date as 10.5.1983. The said certificate is from a Government High School, Erasakkanayakanur, Tamilnadu State. Though this has a presumptive value, it is a rebuttable presumption and the State is entitled to find out whether the accused was or was not juvenile offender. Therefore,

opportunity will have to be offered to both sides to lead the appropriate evidence and to have cross examination. We further find it necessary that it would be proper and in the fitness of things to have a medical examination of the accused from a Civil Surgeon. In order to conduct this inquiry and collect evidence, we find it appropriate to entrust this inquiry to the Additinal Sessions Judge, Pandharpur. Therefore, we direct that Additional Sessions Judge, Pandharpur shall conduct the inquiry under section 7A of the said Act (as amended in 2006) in respect of the age of the accused - appellant by offering appropriate opportunity to the accused - appellant and the State to lead evidence and cross examine the witness of the respective parties. We further direct the Sessions Judge, Pandharpur to get the accused - appellant examined from a Civil Surgeon on the point of age of accused, more specifically on the date of occurrence of the offence and for that purpose, Civil Surgeon may carry out appropriate medical examinations of the accused, i.e., the Ossification Test and other tests. We direct the Sessions Judge, Pandharpur to collect the evidence in this respect and submit it to this Court. The finding in respect of the age on the basis of the evidence will be recorded by this Court when the report is submitted to this Court. All this

exercise shall be completed by the Sessions Judge, Pandharpur within a period of three months. In these terms application is disposed of.

(SMT. NISHITA MHATRE, J.) **(S.B.MHASE, J.)**